

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

RICK KNIGHT,

Plaintiff,

V.

MICHAEL J. ASTRUE,  
Commissioner of Social Security  
Administration,

Defendant.

8:07CV367

# MEMORANDUM AND ORDER

The paid complaint in this pro se social security appeal was filed on September 14, 2007. (Filing 1.) The record reflects that summons were issued on November 16, 2007 (filing 3), but the record does not include any return of service. The Commissioner has not filed any response to the Complaint, whether it be a motion to remand or an answer. This suggests that the Commissioner has not been served with summons. Federal rules provide that

[i]f a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed R. Civ. P. 4(m).

I shall direct Plaintiff to file an affidavit on or before May 30, 2008, indicating service of summons upon the Commissioner. In this regard, I direct Plaintiff's

attention to the attached notice downloaded from the court's external website<sup>1</sup> which describes how to effect service upon an agency of the United States, and to Fed. R. Civ. P. 4(l)(1) which provides that unless service is waived, an affidavit of the server reflecting proof of service must be filed with the court. Failure to comply with this order may result in dismissal of this action without further notice.

Accordingly, it is ordered:

1. On or before May 30, 2008, Plaintiff shall file an affidavit indicating proof of service of summons upon the Commissioner; and
2. Failure to comply with this order may result in dismissal of this action without further notice.

April 30, 2008.

BY THE COURT:

*s/Richard G. Kopf*  
United States District Judge

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<sup>1</sup><http://www.ned.uscourts.gov/forms>.

## Notice regarding Federal Rule of Civil Procedure 4(i)

Federal Rule of Civil Procedure 4(i) regarding “[s]erving the United States, Its Agencies, Corporations, Officers, or Employees,” states:

(1) Service upon the United States shall be effected

(A) by delivering a copy of the summons and of the complaint to the **United States attorney for the district in which the action is brought** or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the office of the United States attorney and

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the **Attorney General of the United States** at Washington, District of Columbia, and

(C) in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to **the officer or agency**.

(2) (A) Service on an agency or corporation of the United States, or an officer or employee of the United States sued only in an official capacity, is effected by serving the United States in the manner prescribed by Rule 4(i)(1) and by also sending a copy of the summons and complaint by registered or certified mail to the officer, employee, agency, or corporation.

(B) Service on an officer or employee of the United States sued in an individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the United States--whether or not the officer or employee is sued also in an official capacity--is effected by serving the United States in the manner prescribed by Rule 4(i)(1) and by serving the officer or employee in the manner prescribed by Rule 4 (e), (f), or (g).

- (3) The court shall allow a reasonable time to serve process under Rule 4(i) for the purpose of curing the failure to serve:

(A) all persons required to be served in an action governed by Rule 4(i)(2)(A), if the plaintiff has served either the United States attorney or the Attorney General of the United States, or

(B) the United States in an action governed by Rule 4(i)(2)(B), if the plaintiff has served an officer or employee of the United States sued in an individual capacity.